

ORIGINAL

June 18, 2003

EX PARTE -- BY HAND

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
c/o Vistrionix, Inc.
236 Massachusetts Avenue, N.E.
Suite 110
Washington, DC 20002

RECEIVED

JUN 18 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**RE: Notice of Ex Parte Presentation: In the Matter of Rules and Regulations Implementing
the Telephone Consumer Protection Act of 1991, CG Dkt. No. 02-278**

Dear Ms. Dortch:

Please include in the public record in the above-captioned proceeding the attached letter, submitted today to Scott Bergmann, Legal Advisor to Commissioner Adelstein.

The original and two copies of this notice and the attached letter are being submitted pursuant to Section 1.1206(b)(1) of the Commission's Rules, 47 C.F.R. §1.1206(b)(1).

If you have any questions regarding this correspondence, please do not hesitate to contact us.

Respectfully submitted,

VECTOR MARKETING CORPORATION

By: 

Judith L. Harris
James Philip Schulz
REED SMITH, LLP

Its Attorneys

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Scott K. Bergmann
Legal Advisor to Commissioner Adelstein
Federal Communications Commission
c/o Vistrionix, Inc.
236 Massachusetts Avenue, N.E.
Suite 110
Washington, DC 20002

**RE: Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991,
CG Docket No. 02-278**

Dear Scott:

During our meeting yesterday on behalf of Vector Marketing Corporation (“Vector”), you asked us 1) whether there had been any discussion of “personal referrals” in the legislative history of the Telephone Consumer Protection Act (“TCPA”), and 2) whether Congress provided any basis for the FCC to create exemptions from provisions of the TCPA beyond the specific exemptions set forth in the statute.

In the limited time we had available, we have reviewed a significant portion of the legislative history of the TCPA, including two House and two Senate reports, the Congressional Record, and other documents from the Congressional Information Service, but have found no discussions specifically relating to “personal referrals.”

However, regarding your second question, whether Congress provided a basis for the FCC to create additional exemptions from provisions of the TCPA, we note (as we discussed during our meeting yesterday) that the TCPA states that the privacy rights that the government is seeking to protect must be balanced in a way that “protects the privacy of individuals and permits legitimate telemarketing practices.” TCPA at §2(9). *See also* NPRM at 2-3.

This overarching directive permeates all aspects of the TCPA, and is given express form in §(c)(1)(C), where the Commission is instructed to “consider whether different methods and procedures may apply for local telephone solicitations, such as local telephone solicitations of small businesses or holders of second class mail permits.” TCPA at §(c)(1)(C). It occurs to us that calls based on “personal referrals,” such as those made by Vector’s reps, are the epitome of local solicitations.

In the *Report of the Senate Committee on Commerce, Science, and Transportation*, filed October 8, 1991, Senator Hollings discussed the introduction of §(c)(1)(C) in relation to the creation of a National Do Not Call database. S. Rpt. 102-177. Senator Hollings notes that a national database is not

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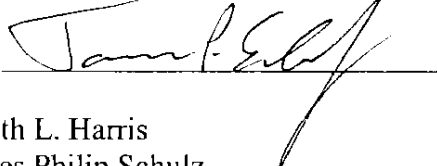
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who make calls "on behalf of" tax-exempt nonprofit organizations. Thus, there is Commission precedent for the FCC's creation of exemptions that are reasonable, but are not explicitly provided for in the statute.

We trust you will find this analysis helpful. If you have further questions about this or any other aspect of our discussions, please let us know.

Respectfully submitted,

VECTOR MARKETING CORPORATION

By: 

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REED SMITH, LLP

Its Attorneys